

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14071 of 2014

Imtiyaz Khan Son of Late Mumtaz Khan, R/o Mohalla - Dumra, P.S. - Dumra,
District - Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Dy. Additional Director General of Police, Tirhut Region, Muzaffarpur.
4. The Inspector General, Tirhut Region, Muzaffarpur.
5. The Superintendent of Police, Sitamarhi.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
Mr. Stya Prakash, Advocate

For the Respondent/s : Mr. Ajay, GA-12
Mr. Ashish Kumar Lal, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 15-03-2016

1. The petitioner was appointed as constable in the year 1982. Subsequently, his services were taken as driver-constable from 1987. In the year 2007, he was posted in Sitamarhi district as driver of S.P., Sitamarhi. He was departmentally proceeded for planting arms underneath bed of one fellow constable, Raj Kumar Paswan. For the alleged offence, a police case was also instituted against the petitioner. On conclusion of the inquiry, the Inquiry Officer recorded finding of guilt. On perusal of the inquiry report and materials on record, the disciplinary authority, namely, respondent no. 5, inflicted punishment of dismissal from service.
2. The petitioner has assailed the impugned proceedings as



well as order of punishment in this writ application. He submits that initially charge-sheet was submitted against Raj Kumar Paswan for illegally hiding a revolver underneath his bed and also cognizance was taken accordingly against him. Later on the Supervising Officer in his supervision arrived at a conclusion that arms were planted by the petitioner and as such, direction was issued to submit final form in favour of Raj Kumar Paswan. There is nothing on record as to what order was passed on the final report. The petitioner submits that he was not given adequate opportunity to defend his case in the departmental proceeding, as neither copy of the inquiry report was furnished, nor any opportunity was provided to make his comments against the adverse findings recorded in the inquiry report, which is in breach of principles of natural justice.

3. Learned counsel for the State submits that the proceeding was carried in accordance with the provisions of Bihar Police Manual, 1978. The petitioner was given adequate opportunity to defend himself. He has rightly been dismissed from service considering the gravity of charge.

4. I have heard counsel for the parties. Though the petitioner has assailed the impugned proceeding and the order of punishment on more than one ground, the matter can be disposed of on a limited issue whether the respondents were required to provide an



opportunity to the petitioner to submit his explanation to the findings recorded in the inquiry report. Counsel for the State submits that Rule 828(b) of the Bihar Police Manual, 1978, does not give an opportunity to a delinquent to submit his explanations to the adverse findings recorded in the inquiry report. Thus, the Disciplinary Authority was within his right to award punishment on the basis of inquiry report without providing a copy to the delinquent under Rule 828(b) of the Bihar Police Manual, 1978.

5. As the issue centres around, the interpretation of Rule 828(b) of the Bihar Police Manual, 1978, the same is quoted herein below for easy reference:-

“828. Infliction of major punishments. –

(a)

(b) Without prejudice to the provision of the Public Servants Enquiries Act, 1850, no order of dismissal, removal, compulsory retirement or reduction shall be passed on any police officer (other than an order based on facts which have led to his conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself.”

6. Though Rule 828 of the Bihar Police Manual, 1978, does not specifically provide for giving 2nd show-cause notice to the delinquent in order to submit his response to the adverse findings recorded in the inquiry report, nonetheless, the provision prescribes



for affording adequate opportunity to defend oneself. The clause affording “adequate opportunity” to defend oneself, would include providing an opportunity to a delinquent to submit his explanation to the adverse findings, as he has the right of reasonable opportunity to represent himself against the findings of the Inquiry Officer in terms of 1st proviso to Article 311(2) of the Constitution.

7. A constitution bench of the Hon’ble Apex Court in case of Managing Director, ECIL, Hyderabad and others Vrs. B. Karunakar and others, reported in AIR 1994 SC 1074 in para 7 & 9 observed that when the Inquiry Officer is other than the disciplinary authority, the delinquent employee has right to receive a copy of the inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. Such report has to be furnished to the employees since it is his right.

8. Again the same principle was reiterated by the Hon’ble Apex Court in the case of Punjab National Bank and others Vrs. Kunj Behari Mishra, reported in AIR 1998 SC 2713. In the aforesaid case, delinquent was dismissed from service without providing an opportunity to submit his response to the adverse findings recorded in the inquiry report, in view of Regulation 7(2) of the Punjab National Bank Officer Employees (Discipline and

Appeal) Regulations, 1977, did not provide for an opportunity to the delinquent to submit his explanation to the adverse findings recorded in the Enquiry Report. Deprecating the stands of the respondents, the Hon'ble Apex Court observed that adequate opportunity of hearing must be given to the delinquent before recording its conclusions.

9. Para 18 and 19 of the judgment which is relevant in the context, is quoted herein below for easy reference:-

“18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceeding stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is

required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1994 AIR SCW 1050).

19. *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."*

10. The case of the petitioner would stand atleast on a similar footing vis-à-vis the case of the delinquent in the case of Punjab National Bank and others Vrs. Kunj Behari Mishra (supra) as no opportunity was given to a delinquent to file his response to the adverse findings recorded in Enquiry Report.

11. Counsel for the petitioner has submitted that a delinquent would be entitled to receive copy of the inquiry report in case he satisfies that prejudice has been caused by non-supply of the same.

Case of the petitioner in reply is that he has been held guilty in the departmental proceeding for alleged violation of transfer order as well as planting arms underneath bed of a fellow constable. He submits that initially charge-sheet in the case was submitted against Raj Kumar Paswan in which cognizance was also taken. He next submits that unless and until he will be provided with the materials on which he has been held guilty, it would not be possible for him to defend his case. I find that the petitioner in fact has made out a case for service of inquiry report for his response.

12. In the result, the impugned order of punishment is set aside. The matter is remitted to the disciplinary authority with liberty to the disciplinary authority to proceed afresh from the stage of issuance of second show-cause notice. The subsequent orders affirming the punishment are also set aside.

The writ application is accordingly disposed of.

(Samarendra Pratap Singh, J)

kunal/-

U			
---	--	--	--